



September 18, 2000

Mr. Mark A. Flowers  
Assistant City Attorney  
Office of the City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2000-3579

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139080.

The City of Midland (the "city") received a request from two individuals for a specific offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

We begin with your argument that the narrative section of the submitted report is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the submitted report pertains to a pending criminal prosecution. Based on this representation, we find that release of the submitted report would interfere with an ongoing criminal case, and therefore, the submitted report is subject to section 552.108(a)(1).

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<sup>1</sup> Although you do not specifically raise section 552.108, we interpret your argument to invoke that particular exception to disclosure.

However, information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. pp.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the city must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the submitted report. We note that the type of information that must be released includes a detailed description of the offense. *See* Open Records Decision No. 127 at 4-5 (1976). Although section 552.108(a)(1) authorizes the city to withhold the remaining information from disclosure, you may choose to release all or part of the report that is not otherwise confidential by law. *See* Gov't Code § 552.007.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>2</sup>Because section 552.108 is dispositive of this matter, we do not address your argument regarding section 552.101 except to note that front page information does not include identities of witnesses. *See* Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/EJF/er

Ref: ID# 139080

Encl: Submitted documents

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